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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,221	06/15/2001	Peter Michael Gits	2705-187	9267
20575	7590	11/01/2007		
MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204			EXAMINER DUONG, THOMAS	
			ART UNIT 2145	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/882,221

Applicant(s)

GITS ET AL.

Examiner

Thomas Duong

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-14, 16, 18-19, 27-31, and 38-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-14, 16, 18-19, 27-31, and 38-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.
2. Appeal Brief received July 30, 2007 has been entered into record. *Claims 11-14, 16, 18-19, 27-31, and 38-45* remain pending.

### ***Response to Amendment***

3. This office action is in response to the Applicants' Appeal Brief filed on July 30, 2007. *Claims 11-14, 16, 18-19, 27-31, and 38-45* are presented for further consideration and examination.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:  
  
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
5. *Claims 11-13* are rejected under 35 USC § 101 because the claims are not limited to tangible embodiments since they do not claim physical articles or objects as part of the

Art Unit: 2145

claims to establish a statutory category as a machine or manufacture, and they are clearly not to a process or composition of matter. As claimed, a *"network lurking agent"* fails to fall within a statutory category of invention. As such, the above claims are not limited to statutory subject matter and are, therefore, non-statutory. Hence, in order to overcome this 35 USC § 101 rejection, the above claims need to be amended to include only the physical computer media and not a transmission media or other intangible or non-functional media.

6. Claims 14, 16, and 18-19 are rejected under 35 USC § 101 because the claims are not limited to tangible embodiments since they do not claim physical articles or objects as part of the claims to establish a statutory category as a machine or manufacture, and they are clearly not to a process or composition of matter. As claimed, a *"network lurking agent"* fails to fall within a statutory category of invention. As such, the above claims are not limited to statutory subject matter and are, therefore, non-statutory. Hence, in order to overcome this 35 USC § 101 rejection, the above claims need to be amended to include only the physical computer media and not a transmission media or other intangible or non-functional media.

7. Claim 31 is rejected under 35 USC § 101 because the claims are not limited to tangible embodiments since they are stored on an unspecified computer readable medium as claimed. As such, the claim is not limited to statutory subject matter and is therefore non-statutory. To overcome this type of 101 rejection the claims need to be amended to include only the physical computer media and not a transmission media or other

Art Unit: 2145

intangible or non-functional media. For the specification at the bottom, carrier medium and transmission media would be not statutory but storage media would be statutory.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 11-14, 16, 18-19, 27-31, and 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saulpaugh et al. (US006934755B1) and in view of Theimer et al. (US005493692A).

10. With regard to claim 11, Saulpaugh discloses,

- *an inquirer designed to place an inquiry in a JavaSpace persistent store, the JavaSpace persistent store part of the system; and* (Saulpaugh, col.1, line 7- col.50, line 32)

Saulpaugh discloses, *"The JavaSpaces technology package provides a distributed persistence and object exchange mechanism for code written in the Java.TM. programming language. Objects are written in entries that provide a typed grouping of relevant fields. Clients can perform simple operations on a JavaSpaces server to write new entries, lookup existing entries, and remove entries from the space. Objects in JavaSpaces are stored in Java Serialization Format. Server JavaSpaces provide persistent object storage replacing*

*traditional file system storage persistence models. JavaSpaces servers provide network service connection system clients such as Jini clients access to a persistent and shareable object store"* (Saulpaugh, col.14, lines 32-45). Hence, Saulpaugh teaches of the client (i.e., Applicants' inquirer writing (i.e., Applicants' placing an inquiry) in a space (e.g., JavaSpace persistent object storage) (i.e., Applicants' JavaSpace persistent store).

- *a lurker designed to retrieve from the JavaSpace persistent store a response to the inquiry to determine the availability of a user in an environment.* (Saulpaugh, col.1, line 7- col.50, line 32)

Saulpaugh discloses, *"A consumer or appliance device with a small amount of memory may be referred to as a "small footprint device." A Compact Network Service Connection System (CNSCS) may be provided for use with small footprint network client devices (PDAs, cell phones, etc.) to locate and lease services on networked systems including servers, and to pass information to and from the located services and resources. The CNSCS may be designed specifically for use with small footprint network client devices that may be too "small" (not have enough resources such as memory) to support a system such as Jini"* (Saulpaugh, col.14, lines 46-56). Hence, Saulpaugh teaches of the consumer (i.e., Applicants' lurker) locating, leasing, and passing information to and from (i.e., Applicants' retrieving) the located services and resources (i.e., Applicants' JavaSpace persistent store).

However, Saulpaugh does not explicitly disclose,

- *a lurker designed to retrieve from the JavaSpace persistent store a response to the inquiry to determine the availability of a user in an environment.*

Art Unit: 2145

Theimer teaches,

- *a lurker designed to retrieve from the JavaSpace persistent store a response to the inquiry to determine the availability of a user in an environment. (Theimer, col.4, lines 27-33; col.11, lines 32-55; col.14, lines 26-38)*

Theimer teaches of *“selectively delivering electronic messages to an identified user in a system of mobile and fixed devices, including multiple display devices and multiple users, where the identity and location of each device, display device, and user may be known to the system, based on the context of the system and the environment of the identified user”* (Theimer, col.4, lines 27-33).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Theimer with the teachings of Saulpaugh to provide a system to inquire about the availability of a user in a distributed computing environment through the use of a space and selectively delivering of electronic messages based on context and environment of the user.

Saulpaugh discloses, *“Sun Microsystems' Jini is an example of a Network Service Connection System (NSCS) that may be used with networked devices to locate and lease resources, herein referred to as services, on networked systems including servers, and to pass information to and from the services located on the networked systems”* (Saulpaugh, col.12, line 59 – col.13, line 10). And it is the objective of Theimer to teach of *“selectively delivering electronic messages to an identified user in a system of mobile and fixed devices, including multiple display devices and multiple users, where the identity and location of each device, display device, and user may be known to the system, based on the context of the system and the environment of the identified user”* (Theimer, col.4, lines 27-33).

11. With regard to claims 12-13, Saulpaugh and Theimer disclose,

- *the network lurking agent further comprising a sender designed to send a message when the response indicates the user is not in available in the environment.* (Saulpaugh, col.1,line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.11, lines 32-55; col.14, lines 26-38)
- *the network lurking agent further comprising a receiver designed to receive a message from the JavaSpace persistent store.* (Saulpaugh, col.1,line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.11, lines 32-55; col.14, lines 26-38)

12. With regard to claim 14, Saulpaugh discloses,

- *a JavaSpace persistent store;* (Saulpaugh, col.1,line 7- col.50, line 32)  
Saulpaugh discloses, *"The JavaSpaces technology package provides a distributed persistence and object exchange mechanism for code written in the Java.TM. programming language. Objects are written in entries that provide a typed grouping of relevant fields. Clients can perform simple operations on a JavaSpaces server to write new entries, lookup existing entries, and remove entries from the space. Objects in JavaSpaces are stored in Java Serialization Format. Server JavaSpaces provide persistent object storage replacing traditional file system storage persistence models. JavaSpaces servers provide network service connection system clients such as Jini clients access to a persistent and shareable object store"* (Saulpaugh, col.14, lines 32-45). Hence, Saulpaugh teaches of the client (i.e., Applicants' inquirer writing (i.e., Applicants'



placing an inquiry) in a space (e.g., JavaSpace persistent object storage) (i.e., Applicants' JavaSpace persistent store).

- *a network lurking agent designed to place the inquiry in the JavaSpace persistent store. (Saulpaugh, col.1, line 7- col.50, line 32)*

Saulpaugh discloses, "A consumer or appliance device with a small amount of memory may be referred to as a "small footprint device." A Compact Network Service Connection System (CNSCS) may be provided for use with small footprint network client devices (PDAs, cell phones, etc.) to locate and lease services on networked systems including servers, and to pass information to and from the located services and resources. The CNSCS may be designed specifically for use with small footprint network client devices that may be too "small" (not have enough resources such as memory) to support a system such as Jini" (Saulpaugh, col.14, lines 46-56). Hence, Saulpaugh teaches of the consumer (i.e., Applicants' lurker) locating, leasing, and passing information to and from (i.e., Applicants' retrieving) the located services and resources (i.e., Applicants' JavaSpace persistent store).

However, Saulpaugh does not explicitly disclose,

- *an environment setting stored in the Space, the environment setting including the availability of a device in an environment;*
- *a network receiving agent designed to receive an inquiry about the availability of the device in the environment from the Space; and*

Theimer teaches,

- *an environment setting stored in the JavaSpace persistent store, the environment setting including the availability of a device in an environment; (Theimer, col.4, lines 27-33; col.11, lines 18-55; col.14, lines 26-38)*

Theimer teaches of *"selectively delivering electronic messages to an identified user in a system of mobile and fixed devices, including multiple display devices and multiple users, where the identity and location of each device, display device, and user may be known to the system, based on the context of the system and the environment of the identified user"* (Theimer, col.4, lines 27-33).

- *a network receiving agent designed to receive an inquiry about the availability of the device in the environment from the JavaSpace persistent store; and (Theimer, col.4, lines 27-33; col.11, lines 32-55; col.14, lines 26-38)*

Theimer teaches of *"selectively delivering electronic messages to an identified user in a system of mobile and fixed devices, including multiple display devices and multiple users, where the identity and location of each device, display device, and user may be known to the system, based on the context of the system and the environment of the identified user"* (Theimer, col.4, lines 27-33).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Theimer with the teachings of Saulpaugh to provide a system to inquire about the availability of a user in a distributed computing environment through the use of a space and selectively delivering of electronic messages based on context and environment of the user. Saulpaugh discloses, *"Sun Microsystems' Jini is an example of a Network Service Connection System (NSCS) that may be used with networked devices to locate and lease resources, herein referred to as services, on networked systems including*

*servers, and to pass information to and from the services located on the networked systems” (Saulpaugh, col.12, line 59 – col.13, line 10). And it is the objective of Theimer to teach of “selectively delivering electronic messages to an identified user in a system of mobile and fixed devices, including multiple display devices and multiple users, where the identity and location of each device, display device, and user may be known to the system, based on the context of the system and the environment of the identified user” (Theimer, col.4, lines 27-33).*

13. With regard to claims 16, 18-19, Saulpaugh and Theimer disclose,

- *wherein the system notifies the network receiving agent about the inquiry when the network lurking agent places the inquiry in the JavaSpace persistent store. (Saulpaugh, col.1, line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)*  
*Theimer discloses, “selectively delivering electronic messages to an identified user in a system of mobile and fixed devices, including multiple display devices and multiple users, where the identity and location of each device, display device, and user may be known to the system, based on the context of the system and the environment of the identified user” (Theimer, col.4, lines 27-33).*
- *wherein the network receiving agent and the network lurking agent are designed to open devices as a result of the inquiry, the devices enabling communication. (Saulpaugh, col.1, line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)*
- *the network lurking agent is designed to place a message in the JavaSpace persistent store if the inquiry is refused; and the network receiver is designed to*

*refuse the inquiry and to receive the message from the JavaSpace persistent store. (Saulpaugh, col.1,line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)*

14. With regard to claims 42, 31, and 44, Saulpaugh discloses,

- *identifying an environment of interest; and (Saulpaugh, col.1,line 7- col.50, line 32)*

Saulpaugh discloses, *"The JavaSpaces technology package provides a distributed persistence and object exchange mechanism for code written in the Java.TM. programming language. Objects are written in entries that provide a typed grouping of relevant fields. Clients can perform simple operations on a JavaSpaces server to write new entries, lookup existing entries, and remove entries from the space. Objects in JavaSpaces are stored in Java Serialization Format. Server JavaSpaces provide persistent object storage replacing traditional file system storage persistence models. JavaSpaces servers provide network service connection system clients such as Jini clients access to a persistent and shareable object store"* (Saulpaugh, col.14, lines 32-45). Hence, Saulpaugh teaches of the client (i.e., Applicants' inquirer writing (i.e., Applicants' placing an inquiry) in a space (e.g., JavaSpace persistent object storage) (i.e., Applicants' JavaSpace persistent store).

- *placing an inquiry as to the availability of a user in the environment of interest in a JavaSpace persistent store, the JavaSpace persistent store part of the system.* (Saulpaugh, col.1,line 7- col.50, line 32)

Saulpaugh discloses, *"The JavaSpaces technology package provides a distributed persistence and object exchange mechanism for code written in the Java.TM. programming language. Objects are written in entries that provide a typed grouping of relevant fields. Clients can perform simple operations on a JavaSpaces server to write new entries, lookup existing entries, and remove entries from the space. Objects in JavaSpaces are stored in Java Serialization Format. Server JavaSpaces provide persistent object storage replacing traditional file system storage persistence models. JavaSpaces servers provide network service connection system clients such as Jini clients access to a persistent and shareable object store"* (Saulpaugh, col.14, lines 32-45). Hence, Saulpaugh teaches of the client (i.e., Applicants' inquirer writing (i.e., Applicants' placing an inquiry) in a space (e.g., JavaSpace persistent object storage) (i.e., Applicants' JavaSpace persistent store).

However, Saulpaugh does not explicitly disclose,

- *placing an inquiry as to the availability of a user in the environment of interest in a JavaSpace persistent store, the JavaSpace persistent store part of the system.*

Theimer teaches,

- *placing an inquiry as to the availability of a user in the environment of interest in a JavaSpace persistent store, the JavaSpace persistent store part of the system.* (Theimer, col.4, lines 27-33; col.11, lines 32-55; col.14, lines 26-38)

Theimer teaches of *"selectively delivering electronic messages to an identified user in a system of mobile and fixed devices, including multiple display devices and multiple users, where the identity and location of each device, display*

*device, and user may be known to the system, based on the context of the system and the environment of the identified user” (Theimer, col.4, lines 27-33).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Theimer with the teachings of Saulpaugh to provide a system to inquire about the availability of a user in a distributed computing environment through the use of a space and selectively delivering of electronic messages based on context and environment of the user. Saulpaugh discloses, *“Sun Microsystems’ Jini is an example of a Network Service Connection System (NSCS) that may be used with networked devices to locate and lease resources, herein referred to as services, on networked systems including servers, and to pass information to and from the services located on the networked systems” (Saulpaugh, col.12, line 59 – col.13, line 10).* And it is the objective of Theimer to teach of *“selectively delivering electronic messages to an identified user in a system of mobile and fixed devices, including multiple display devices and multiple users, where the identity and location of each device, display device, and user may be known to the system, based on the context of the system and the environment of the identified user” (Theimer, col.4, lines 27-33).*

15. With regard to claims 27-28 and 38-39, Saulpaugh and Theimer disclose,

*the method further comprising responding to the inquiry by a network receiving agent. (Saulpaugh, col.1, line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)*

- *wherein responding to the inquiry includes accessing devices by the network lurking agent and the network receiving agent to enable communication.*

Art Unit: 2145

(Saulpaugh, col.1,line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)

16. With regard to claims 29-30 and 40-41, Saulpaugh and Theimer disclose,

- wherein responding to the inquiry includes:
  - *refusing the inquiry by the network receiving agent*; (Saulpaugh, col.1,line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)
  - *placing a message in the JavaSpace persistent store by the network lurking agent*; (Saulpaugh, col.1,line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)
  - *retrieving the message from the JavaSpace persistent store by the network receiving agent; and* (Saulpaugh, col.1,line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)
  - *storing the message for later access from the environment.* (Saulpaugh, col.1,line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)

17. With regard to claims 43 and 45, Saulpaugh and Theimer disclose,

- *wherein responding to the inquiry includes determining the availability of a user in the environment according to an environment setting in the JavaSpace persistent store.* (Saulpaugh, col.1,line 7- col.50, line 32; Theimer, col.4, lines 27-33; col.7, lines 1-34; col.11, lines 32-55; col.14, lines 26-38)

Art Unit: 2145

Theimer teaches of *"selectively delivering electronic messages to an identified user in a system of mobile and fixed devices, including multiple display devices and multiple users, where the identity and location of each device, display device, and user may be known to the system, based on the context of the system and the environment of the identified user"* (Theimer, col.4, lines 27-33).

### **Response to Arguments**

18. Applicant's arguments with respect to *claims 11-14, 16, 18-19, 27-31, and 38-45* have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Duong whose telephone number is 571/272-3911. The examiner can normally be reached on M-F 7:30AM - 4:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason D. Cardone can be reached on 571/272-3933. The fax phone numbers for the organization where this application or proceeding is assigned are 571/273-8300 for regular communications and 571/273-8300 for After Final communications.

Thomas Duong (AU2145)

October 29, 2007



Jason D. Cardone

Supervisory PE (AU2145)